

FREDERICK COUNTY CONSERVATION EASEMENT PROGRAM

1. Intent:

To further the goals of the County's Comprehensive Plan and provide a means to assist county landowners in protecting and preserving farm and forest land, open space, scenic vistas, historic sites, water resources and environmentally sensitive lands, and the county's rural character. This ordinance establishes a program which will enable the County to acquire voluntary conservation easements either through donation or, should funding be made available, through purchase, as one means of assuring these valuable County resources are protected. It is hoped that this will in turn assist in shaping the character and direction of development, promote tourism through the preservation of scenic and historic resources, and assist in preserving the quality of life for the inhabitants of the County.

2. Authority/Applicability.

The Frederick County Conservation Easement Program (FCEP) program is established under the provisions of the Open Space Land Act, Chapter 17, Title 15.2 (§10.1-1700 et seq.), Code of Virginia and shall be available for all land in the County. The owner shall voluntarily offer any conservation easement acquired pursuant to this chapter.

3. Definitions.

A. The following definitions shall apply in the interpretation and implementation of this chapter:

- (1) *Authority.* The Frederick County Conservation Easement Authority.
- (2) *Conservation easement.* The term "conservation easement" means a nonpossessory interest in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations of affirmative obligations, the purpose of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.
- (3) *Development right.* The number of residential building lots that may be created from the parent tract in a given zoning district per the Frederick County Zoning and Subdivision Regulations.
- (4) *Owner.* The term "owner" means the owner or owners of the freehold interest of the parcel.

(5) *Program administrator.* The term “program administrator” means the Director of Planning and Development.

(6) *Parcel.* The term “parcel” means a lot or tract of land, lawfully recorded in the clerk’s office of the circuit court of the County of Frederick. Because a conservation easement may contain one or more parcels, for purposes of this chapter the term “parcel” shall include all parcels covered by, or proposed to be covered by, the conservation easement.

4. Program administrator; powers and duties.

A. *Powers and duties.* The Director of Planning and Development, or his designee, shall have the following powers and duties with respect to the program:

(1) Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.

(2) Evaluate all applications to determine their eligibility and their ranking based on their score, and make recommendations thereon to the Authority.

(3) Determine the number of usable development rights existing on each parcel subject to an application.

(4) Where funding is made available for purchase, coordinate the preparation of appraisals.

(5) Provide staff support to the Authority.

(6) Assure that the terms and conditions of all easements are monitored and complied with by coordinating with each easement holder.

5. Authority; powers and duties.

A. *Powers and duties.* The Authority shall have the powers and duties to:

(1) Acquire and co-hold easements pursuant to the provisions of the ordinance.

(2) Apply for and pursue grants, other funding, and gifts from the Virginia Land Conservation Fund, state and federal agencies, and private persons and entities for the purchase of easements.

(3) Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.

(4) Review the ranking of applications recommended by the program administrator and make a determination as to whether an easement donation offer should be accepted and, subject to funding availability, which, if any, conservation easements should be purchased.

(5) Annually review the program's eligibility and ranking criteria and recommend to the Board of Supervisors any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

(6) Take action to enforce compliance with terms of easements being co-held by the Authority.

(7) Exercise any powers authorized by the Public Recreation Facilities Authorities Act.

6. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria: (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; (ii) the proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in Section 8 (Easement Terms and Conditions) and (iii) the parcel shall obtain at least fifteen (15) points under the ranking criteria set forth under Section 7 (Ranking Criteria) unless the Authority finds that it is in the best interest of the County to waive this requirement.

7. Ranking criteria.

In order to effectuate the purposes of this chapter, parcels for which FCEP applications for purchase have been received shall be ranked according to the criteria and the point values assigned thereto as set forth herein. Points shall be rounded to the first decimal (*e.g.* Under criteria A.1., a property with 740 feet of shared boundary with a park would receive 1 point for sharing a boundary, plus 1.48 points for the length of the shared boundary, which when rounded to the first decimal would be 1.5 points, for a total of 2.5 points for that criteria).

A. *Open-space resources.*

(1) The parcel adjoins an existing permanent conservation easement, a national, state or local park. One (1) point, plus one (1) point for every five hundred (500) feet of shared boundary.

(2) The number of usable development rights on the parcel as determined by the Program Administrator based on the applicable Frederick County Zoning Ordinance Regulations: one half (½) point per usable development right.

B. *Threat of development.*

- (1) The parcel is zoned for a non agricultural use: three (3) points.
- (2) The parcel is deemed to be threatened due to it's proximity to the County's Urban Development Area or Sewer and Water Service Area boundary or to property that has been developed for a non agricultural use within the last three years: two (2) points.

C. *Natural, cultural, recreational, and scenic resources.*

- (1) The parcel adjoins a state maintained road: one (1) point for each five hundred (500) feet of road frontage along a designated Virginia scenic highway or byway; (1) point for each one thousand (1000) feet of road frontage on a non-designated public road.
- (2) The parcel contains or fronts a public trail or is identified as part of a planned trail network, two (2) points; an adjoining parcel contains or fronts on a public trail or is identified as part of a planned trail network: one (1) point.
- (3) The parcel contains historic resources: Three (3) points if: (i) the parcel is within or adjoins a national or state historic park or Civil War Battlefield; (ii) is listed on the state or national register of historic places, or; (iii) is subject to a permanent easement protecting a historic resource. Two (2) points if the parcel contains, or adjoins a parcel containing a historic structure identified by the Frederick County Rural Land Mark Survey or otherwise documented as being over 100 years old. An additional one (1) point if the parcel contains identified archaeological resources.
- (4) The parcel is within a watershed or sub watershed identified as impaired on the Virginia Department of Environmental Quality's Impaired Waters List: (3) points.
- (5) The parcel fronts on a perennial stream as identified by the USGS 7.5 minute series quad maps or other reliable source: one (1) point for every one thousand (1000) linear feet of stream frontage.
- (6) The parcel is within a sensitive groundwater recharging area as demonstrated by the presence of sinkholes or karst topography: one (1) point.
- (7) The parcel contains perennial springs or wetlands. One (1) point for each occurrence.

D. *For Farm or Forest land Protection*

(1) The parcel contains “prime farm land” as identified by the *1987 USDA Soil Survey of Frederick County* one half (½) point for each 10 acres containing such soils, for up to a total of five (5) points.

(2) The parcel is currently designated as part of an Agricultural or Forestal district: four (4) points. The parcel qualifies for land use taxation under the provision for agricultural land but is not in an Agricultural or Forestal District, three (3) points; the parcel qualifies for land use taxation under the provision for forestal land but is not in an Agricultural or Forestal District two (2) point.

(3) The parcel has an approved Nutrient Management Plan and/or employs agricultural best management practices as approved by the Lord Fairfax Soil and Water Conservation District or Natural Resources Conservation Service: one (1) point

(4) The property owner can document that he/she has in place a conservation plan or participates in a recognized program that restores and/or protects stream channels, riparian zones, and wetlands: one (1) point.

E. *Fund leveraging.*

(1) Non-local government funding has been identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the total purchase price for which those funds can be applied. Donation of all or a portion of the easement by the owner shall be considered fund leveraging and points awarded at the same rate.

8. Easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act and of this ordinance. The deed of easement shall be in a form approved by the County Attorney, and shall contain, at a minimum, the following provisions:

A. *Restrictions.* In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and may include, but not necessarily be limited to, restrictions pertaining to: (i) the accumulation of trash and junk; (ii) the display of billboards, signs and advertisements; (iii) the management of forest resources; (iv) grading, blasting or earth removal; (v) the number of new dwellings and the number and size of outbuildings and farm buildings or structures; (vi) the conduct of industrial or commercial activities on the parcel; and (vii) monitoring of the easement.

B. *Designation of easement holders.* The Authority and the Frederick County Board of Supervisors shall be the co-holders of all easements acquired under this program. The Authority shall seek one or more public bodies, as defined in Virginia Code §10.1-1700, or private holder, as defined in Virginia Code §10.1-1009, to be additional co-holders in

the deed of easement or added by the Board of Supervisors and the Authority later, unless the Authority finds additional co-holders to be not feasible or not advisable.

9. Application and evaluation procedure.

Each application for a conservation easement shall be processed as follows:

- A. *Application materials to be provided to owner.* The application materials provided by the program administrator to an owner shall include, at a minimum, a standard application form, a sample deed of easement, and information about the FCEP program.
- B. *Application form.* Each application shall be submitted on a standard form prepared by the program administrator. The application form shall require, at a minimum, that the owner: (i) provide the name and address of all owners of the parcel, (ii) the acreage of the parcel, (iii) the tax map and parcel number, (iv) the zoning designation of the parcel, (v) permission for the program administrator to enter the property after reasonable notice to the owner to evaluate the parcel and for the County's assessor or an independent appraiser to appraise the property (vi) identification of all lien holders on the parcel, including without limitation, holders of deed of trust liens and judgment liens and (vii) identify whether it is their desire to donate or sell an easement. The application form shall also include a space for an owner to indicate that whether he volunteers to have his parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to state those voluntary, additional restrictions.
- C. *Submittal of application.* Applications shall be submitted to the office of the program administrator. An application may be submitted at any time. However, applications involving an easement purchase received after June 1 shall be evaluated in the following fiscal year.
- D. *Evaluation by program administrator.* The program administrator shall evaluate each complete application received and determine whether the parcel satisfies the eligibility criteria set forth in Section 6 and shall make recommendations thereon to the Authority.
- E. *Evaluation by Authority.* The FCEP shall review the list of parcels submitted by the program administrator and identify on which parcels, if any, it desires conservation easements.
- F. *Board of Supervisors Approval.* The Program Administrator shall forward to the Board of Supervisors for their review and approval, any parcel which is located within the bounds of the County's Sewer and Water Service Area or Urban Development Area, prior to the Authority pursuing acquisition of an easement.
- G. *Application.* An owner of a parcel not selected by the Authority for purchase or acceptance of a conservation easement may reapply in any future year.

10. Acceptance of Easements.

Upon approval of an easement by the Authority pursuant to the terms of this ordinance, the proposed easement shall be forwarded to the Board of Supervisors for its approval. No easement shall be accepted unless approved by both the Authority and the Board of Supervisors. Upon approval by the Authority and the Board of Supervisors, and by any additional co-holder if applicable, the deed of easement shall be executed by all parties and recorded in the Frederick County land records. **Nothing in this chapter shall obligate the Authority to purchase or accept a conservation easement on any property.**

11. Purchase of conservation easement.

Should the Authority desire to purchase an easement, the following procedures shall apply.

A. *Identification of initial pool.* For applications received under Section 9, in which the owner has indicated a desire to sell an easement, the program administrator shall determine the number of points to be attributed to each parcel by applying the criteria set forth in section 7. The program administrator shall rank each parcel scoring at least fifteen (15) points with the parcel scoring the most points being the highest ranked and descending therefrom. The program administrator shall submit the list of ranked parcels to the Authority. The Authority shall designate the initial pool of parcels identified for conservation easements to be purchased. The purchase price may be supplemented by non-county funding as discussed in Section 7 (E) above. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year.

B. *Additional application information required by program administrator.* The program administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; and (ii) the purchase price of such easement.

C. *Appraisal of conservation easement value.* Each conservation easement identified by the Authority to be purchased shall be appraised either by the County's assessor or by an independent qualified appraiser chosen by the Authority. Each completed appraisal shall be submitted to the program administrator and the owner. The program administrator shall forward each appraisal to the Authority, which shall review each appraisal.

D. *Invitation of offer to sell.* The Authority shall invite the owner of each parcel included in the initial pool of conservation easements to submit an offer to sell to the Authority a conservation easement on that parcel, subject to the terms and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the desired purchase price, the proposed deed of easement, and the date by which a written offer must be received by the program administrator in order to be considered. The

invitation may contain an offer form to be returned if the owner desires to sell a conservation easement.

E. *Offer to sell.* Each owner who desires to sell a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement that substantially states the following: “(The owner) offers to sell a conservation easement to the Authority for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to offer.” Nothing in this chapter shall compel an owner to submit an offer to sell.

F. *Acceptance.* Nothing in this chapter requires the Authority to accept an offer to sell a conservation easement.

G. *Offers not made; offers not accepted; invitation to other owners.* If an owner invited to submit an offer elects not to do so, or if his offer to sell is not accepted by Authority, then the Authority may send an invitation to offer to sell to other owners on the list.

H. *Costs.* If the Authority accepts an offer to sell a conservation easement, the Authority may pay all costs, including environmental site assessments, surveys, recording costs, grantor’s tax, if any, and other charges associated with closing. Provided, however, the Authority shall not pay fees incurred for independent appraisals or legal, financial, or other advice, or fees in connection with the release and subordination of liens to the easement purchased by the Authority.

I. *Application.* An owner for whose parcel a conservation easement is not purchased may reapply in any future year.

J. *Special Consideration.* The Authority shall give special consideration and take immediate action to review applications in the special case where private funding is available to cover one hundred (100) percent of the cost of the purchase, or the owner is willing to donate the conservation easement at no cost to the county, provided that such parcel meet the eligibility requirements of this ordinance.

12. Program funding.

The FCEP program may, but is not required to, be funded annually by the Board of Supervisors in the County budget or by special appropriation. The Authority shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of this chapter. **Nothing in this chapter shall require the Board of Supervisors to fund this program.**

**FREDERICK COUNTY
CONSERVATION EASEMENT AUTHORITY**

Articles of Incorporation.

- 1) The name of the Authority is Frederick County Conservation Easement Authority. The address of its principal office is 107 North Kent Street, Winchester, Virginia 22601.
- 3) The Authority is created under the Public Recreational Facilities Authorities Act, Chapter 56 of Title 15.2 (§15.2-5600, et seq.), Code of Virginia.
- 4) The participating locality is Frederick County, Virginia.
- 5) The names, addresses, and terms of office of the initial members of the Board of Directors of the Authority are:

NAME	ADDRESS	TERM ENDING
Richie Wilkins	13 S. Loudoun Street Winchester, VA 22601	3 years from the date of appointment
Philip B. Glaize, Jr.	P.O. Box 2077 Winchester, VA 22604	2 years from the date of appointment
Diane Kearns	P.O. Box 2368 Winchester, VA 22604	3 years from the date of appointment
Edgar C. "Bud" Good, Jr.	187 Sawlog Road Gore, VA 22637	1 years from the date of appointment
John Light (Planning Commission member)	2973 Woodside Road Winchester, VA 22624	1 years from the date of appointment
Mrs. Barbara E. Van Osten (Board of Supervisors Member)	103 Coopers Lane Winchester, VA 22603	3 years from the date of appointment
Jim Lawrence	Winchester Green Circle 408 Marion Street Winchester, VA 22601	2 years from the date of appointment
Todd B. Lodge	3654 Apple Pie Ridge Road Winchester, VA 22603	2 years from the date of appointment
C. Robert Solenberger	Fruit Hill Orchard P.O. Box 2368 Winchester, VA 22604-1568	1 year from the date of appointment

- 6) The purposes of the Authority are to acquire and/or receive conservation easements, by purchase, gift, or other conveyance; to hold and enforce conservation easements conveyed to it; to administer the Frederick County Conservation Easement Purchase Program pursuant to the ordinance establishing the Program; and to exercise any powers authorized by the Public Recreational Facilities Authorities Act.

Board of Directors

- 1) The powers of the Authority shall be exercised by a Board of Directors of nine (9) members, appointed by the Board of Supervisors, to be comprised of one (1) member from the Board of Supervisors, one (1) member from the Planning Commission, and seven (7) citizen members. The initial term of three (3) members shall be for one (1) year. The initial term of three (3) members shall be for two (2) years. The initial term for three (3) members shall be for three (3) years. Each term after the initial term shall be for three (3) years. Subsequent to the initial appointment of members, any vacancy on the Authority Board shall be filled by appointment of the Board of supervisors. Members shall be eligible for reappointment.
- 2) Authority members shall be knowledgeable in one or more of the following fields; conservation, biology, real estate and/or rural land appraisal, accounting, farming, or forestry.
- 3) The Authority shall elect a chairman, vice-chairman, treasurer, and secretary at its first meeting each calendar year.
- 4) The members of the Board shall serve without compensation.